promissory notes,[14] the modern conception of which rebuts any objection to the relevancy of these cases here based on the assumption that promissory notes are specialties requiring no consideration. The same result has been reached by a number of jurisdictions in cases of simple contract,[15] and at least one state has a statutory declaration to that effect.[16]

RECENT CASES.

ADMIRALTY — DECREES — CHANGE IN TITLE IN CONDEMNED PRIZE. — The plaintiff sued on a policy of marine insurance for loss of his ship by perils of the sea. The ship was captured during the Russo-Japanese war by a Japanese cruiser, but was wrecked on the Japanese coast before reaching port. Subsequently the wreck was condemned as a prize. *Held*, that the insured cannot recover. *Andersen* v. *Marten*, [1908] A. C. 334.

For a discussion of the case in the lower court, see 21 HARV. L. REV. 55.

BANKRUPTCY — DISCHARGE — EFFECT OF COMPOSITION AGREEMENT IN EXERCISING STATUTORY CONDITION. — By statute the stockholders of a corporation were made personally liable for its debts after judgment against the corporation and petition of execution unsatisfied. A corporation filed a petition in bankruptcy and all suits against it were restrained. The plaintiff secured an order permitting him to bring action, but before judgment a composition agreement was accepted by a majority of the creditors against the plaintiff's rights and was ratified by the court. The plaintiff thereupon discontinued his suit. He then sued the stockholders on their statutory liability. *Held*, that he cannot recover. *Firestone Fire Co.* v. *Agnew*, 40 N. Y. L. J. 639 (N. Y. App. Div., Nov. 1908).

The confirmation of a composition agreement by the proper court has the same effect as a discharge in bankruptcy. *In re Merriman*, Fed. Cas. 9, 479. The purpose of requiring a judgment here as a condition precedent is to make the creditor prove the debt and exhaust his remedy against the corporation. *United Glass Co.* v. *Vary*, 152 N. Y. 121. When performance of such a condition is rendered impossible by operation of law, it is excused. *Flash* v. *Conn.*, 109 U. S. 371. But it has been held that the court, in order to enable the plaintiff to go against the sureties on an attachment bond, may render judgment with a perpetual stay of execution, against a discharged bankrupt. *Hill* v. *Harding*, 130 U. S. 699. *Contra*, *Johnson* v. *Collins*, 117 Mass. 343. This analogous case then is authority for saying that though the corporation is relieved from paying the debt, a special judgment may be had against it for certain purposes. The right to this anomalous action against the bankrupt makes the present decision logical. But as a matter of practical expediency, it seems doubtful whether the court should compel the plaintiff to pursue this fruitless action before he can reach the stockholders.

BANKS AND BANKING — BANKER'S LIEN — EFFECT OF VOID PAYMENT OF NOTES. — An insolvent corporation deposited funds in the defendant bank which held its notes, some unmatured. By checks drawn on its deposit within four months of its bankruptcy, the corporation paid the notes as they matured. The checks were given intending a preference, and were therefore voidable

[14] Eaton *v.* Libbey, *supra;* Mize *v.* Barnes, 78 Ky. 506; Horn *v.* Fuller, 6 N. H. 511.

[15] Rector of St. Marks *v.* Tweed, 120 N. Y. 583; Bank *v.* Chalmers, 144 N. Y. 432; Williamson *v.* Yager, 91 Ky. 282; Cabot *v.* Haskins, *supra;* Van Eman *v.* Stanchfield, 10 Minn. 255.

[16] Ga. Civ. Code, § 3664. In Bell *v.* Sappington, 111 Ga. 391, specific performance was granted of such an agreement.

under the New York Stock Corporation Laws. But as the bank was *bona fide*, these payments were not voidable as a preference under the bankruptcy laws. The trustee in bankruptcy brought an action to recover these payments from the bank. *Held*, that he cannot recover. *Irish* v. *Citizens Trust Co.*, 163 Fed. 880 (Dist. Ct., N. D. N. Y., Aug., 1908).

If the checks had not been given, the deposit would have been subject to a banker's lien, which is not the technical lien, but a mere right of set-off as to any matured debt due the bank. *Bank* v. *Brewing Co.*, 50 Oh. St. 151. Under the bankruptcy laws, the bank could have set off any matured debt, even against deposits made within four months of bankruptcy. *New York County Nat'l Bank* v. *Massey*, 192 U. S. 138. The deposit of money in a bank creates the relation of debtor and creditor, so the effect of the checks given was to decrease the obligation of the bank to the depositor. *Marine Bank* v. *Fulton Bank*, 2 Wall. (U. S.) 252. See *Bank* v. *Brewing Co.*, *supra*. But the trustee, having elected to treat these checks as void, the obligation of the bank to the depositor revived and the notes remained unpaid. And no preference existed to prevent the bank from setting up as against the trustee any claim it might possess against the depositor. The bank's right of setting off against the notes was, therefore, properly held to defeat the trustee.

BANKS AND BANKING — DEPOSITS — EFFECT OF FAILURE OF DEPOSITOR TO NOTIFY BANK OF FORGERIES. — A depositor discovered that his bank had paid and charged to his account forged checks. He failed to notify the bank promptly of the forgeries. *Held*, that he cannot recover from the bank, irrespective of whether it could have protected itself had it been promptly notified. *McNeely Co.* v. *Bank of North America*, 70 Atl. 891 (Pa.).

A depositor is not chargeable with any payments by his bank except such as are made in conformity with his orders. *Shipman* v. *State Bank*, 126 N. Y. 318. But he owes to the bank the duty of examining returned vouchers and reporting forgeries. *First Nat. Bank* v. *Allen*, 100 Ala. 476. *A fortiori* is it his duty to give prompt notice when he knows of the forgeries. *Dana* v. *Nat. Bank of the Republic*, 132 Mass. 156. The question, then, is whether a depositor who fails in this duty is estopped from claiming from the bank the amounts wrongly paid. Forbearance to exercise a right in reliance on the wrongful act of another is sufficient basis for an estoppel. *Voorhis* v. *Olmstead*, 66 N. Y. 113. The right to seek restoration from a forger is, in itself, a valuable one, and the depositor should be barred if it appears that owing to his wrongful acts the bank omitted to exercise that right promptly or effectively. *Leather Manufacturers' Bank* v. *Morgan*, 117 U. S. 96. The law assumes that had notice been given promptly, steps might have been taken to protect the bank. See *United Security, etc., Co.* v. *Central Nat. Bank*, 185 Pa. 596. The present case seems to fall directly within this reasoning.

CANCELLATION OF INSTRUMENTS — DEEDS: RESTORATION IN STATU QUO. — The plaintiff filed a bill for the cancellation of a deed to the defendant, which the defendant by duress had induced her to execute and deliver before her marriage to him. The defendant contended that, as the marriage was the sole consideration for the deed, restoration *in statu quo* was impossible, and that therefore the bill must fail. *Held*, that in spite of the plaintiff's inability to make any restoration, the court may order the deed cancelled. *Ring* v. *Ring*, 127 N. Y. App. Div. 411.

On the broad ground that he who seeks equity must do equity, it is the general rule that a party seeking to rescind a contract must restore the other party *in statu quo*. *Felt* v. *Bell*, 205 Ill. 213. But since the object of the rule is to do justice, it must not be carried too far: substantial restoration is all that should be required. *Mather* v. *Barnes*, 146 Fed. 1000, 1019. Even this will not be necessary where the wrongdoer by his own act has made impossible more than a partial restoration; for then all that can in fairness be asked is restoration to the extent of the plaintiff's ability. *Butler* v. *Prentiss*, 158 N. Y. 49. It follows logically, and as a final limitation of the doctrine of restoration, that if the wrongdoer has complicated matters so that no restoration at all is possible,